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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/599,269	06/22/2000	Stephen W. Rose	OF-102US	8360
24314	7590	04/19/2004	EXAMINER	
JANSSON, SHUPE & MUNGER, LTD 245 MAIN STREET RACINE, WI 53403			OCAMPO, MARIANNE S	
			ART UNIT	PAPER NUMBER

1723

DATE MAILED: 04/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/599,269

Applicant(s)

ROSE ET AL.

Examiner

Marianne S. Ocampo

Art Unit

1723

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment for more details.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-4,6-7,9-15,17-25,27 and 29-31.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: ATTACHMENT TO ADVISORY ACTION and PTO 892

### ATTACHMENT TO ADVISORY ACTION

1. Applicants' arguments filed 3-16-04 have been fully considered but they are not persuasive. The supplemental declaration filed by Dr. Ernest Mayer, in behalf of the applicants, has been given full consideration, however, it fails to persuade the examiner to withdraw the final rejections for the following reasons:

a). applicants' base claim has not been narrowed down to any specific material of construction, in particular to TYVEK Soloflo filter material.

b). the problem of flexibility and extreme thinness of the non-woven material used in the making of the claimed invention (i.e. pleated filter cartridge) is actually not addressed yet by the applicants and would be apparent also in applicants' claimed invention as it is claimed by its base claim. It would seem that the claimed invention, as it is claimed by base claim 1, would also have the same problems (i.e. very flimsy and would not be capable of lengthwise bonding which is necessary in formation of pleated filter cartridges) addressed by Dr. Mayer in his supplemental declaration (see paragraphs 8 – 13). The examiner has considered and reviewed the specification and it was found that the flexibility and extreme thinness of the filter material of the claimed invention is solved by **having a (i.e. low density polyethylene) mesh layer formed and tack-point bonded to the filter material** of the claimed invention, **which is not yet claimed in base claim 1.**

c). Base claim 1 is also open to more than one layer or sheet of filter material (the limitation is "*an annular non-woven filter element...of at least one sheet of filter material*") [see

lines 3 – 4 of claim 1], and therefore, the teaching of Marshall et al. of laminating or bonding more than one sheet of TYVEK material and then calendaring these bonded sheets of TYVEK to form a *thickness of 82 – 122 microns* (see examples 26 – 27 and pages 24 – 25, *equivalent to 0.082 to 0.122 mm, which is within the claimed range of less than about 0.15 mm*), and further the bonded/laminated sheets are corona treated, making the sheets more suitable for liquid filtration end use applications (examples 26 and 27 are disclosed to being used in wastewater filtration of heavy metals and for liquid filtration, respectively, see page 25, lines 11 – 13 of Marshall et al.).

d). Laminated sheets or bonded/calendered sheets of TYVEK filter material are not flimsy and would not have the extreme flexibility that a/one sheet of TYVEK filter material would have.

e). It is well known in the art to form filter materials, including those that have been laminated and bonded/calendered sheets, into a pleated filter cartridge configuration. In this instance, pleating such filter materials would increase the filtration surface area available for trapping and removing dirt/particulate material being removed from a fluid being passed through the filter cartridge. It is also well-known in the art of fluid filtration to form ***non-woven filter materials made of high density polyethylene*** (same material forming the TYVEK Soloflo of DuPont, the filter material in Marshall et al. and the filter material of the claimed invention) ***into pleated filter cartridges***, as evidenced by Pike et al. (US 5,855,784), Paul (US Patent Application Publication 2002/0179521 A1) and Kanno et al. (US 6,309,438B1).

2. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the feature upon which applicant relies (i.e., the filter material being made of TYVEK) is not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

3. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

4. Lastly, although it may be the same TYVEK material that forms the filter material of Marshall et al. (secondary reference) and that of the claimed invention, applicants' arguments regarding non-obviousness of the combination of Gsell et al. and Marshall et al. have not been persuasive. In particular, the supplemental declaration of Dr. Mayer submitted with these arguments created more questions to the examiner as to the operability of applicants' claimed invention as claimed by the base claim 1, particularly in the instance of the filter element being formed by only one (at least one) sheet of filter material formed of flash-spun, pleximentary high density polyethylene, which has been made to be equivalent to the TYVEK material sold by DuPont, in light of applicants' arguments. Marshall et al.'s filter material (particularly those in examples 26 & 27 mentioned above) is actually different, if not better than the one sheet of filter

Art Unit: 1723

material claimed by the applicants since the prior art (Marshall et al.) filter material is formed by a number of sheets laminated/bonded by calendaring to each other, with the resulting (laminated/bonded) filter material having a thickness within the claimed thickness range of the claimed invention, and therefore, would not be as flimsy or extremely flexible as Dr. Mayer suggested.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marianne S. Ocampo whose telephone number is (571) 272-1144. The examiner can normally be reached on Mondays to Fridays from 8:30 A.M. to 4:30 P.M..

6. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on (571) 272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1723

7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
M.S.O.

  
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